

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 4845 of 2007(B)

OS.206/1999 of SUB COURT, MAVELIKKARA

PETITIONER:

**KARTHIKKEYAN, KARTHIKA BHAVAN,
KURITTIKADU MURI, MANNAR VILLAGE.**

BY ADV. SRI.RINNY STEPHEN

RESPONDENT/DEFENDANT:

**RADHA LAKSHMI AMMA,
PRUMBRAVALLIL HOUSE,
KARAZHAMA EAST MURI,
CHENNITHALA VILLAGE,
MAVELIKARA TALUK.**

BY ADV. SRI.IYPE JOSEPH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.P. Balachandran, J.

W.P.(C)No. 4845 of 2007 B

JUDGMENT

Heard the submissions of counsel on both sides.

2. O.S.No.206/99 is instituted before the Sub Court, Mavelikara by the petitioner/plaintiff for specific performance. The agreement is disputed by the respondent. Naturally, therefore, in proof of the disputed agreement, witness to the agreement should have been examined. Probably, by lack of experience on the part of the counsel for the petitioner, no such attempt was made and he was expecting that matters could be brought out by cross-examination of the respondent/defendant, who wisely avoided entering into the witness box. The petitioner filed I.A.No.2005/06 in the said suit to review the order, posting the case for hearing, without filing any petition to re-open the case for evidence or filing any witness schedule. For those

reasons, I.A.No.2005/06 was dismissed and hence this writ petition.

3. I do not find fault with the order of the court below. The situation was brought about by the petitioner himself, for which he has to blame himself and not the respondent or the court. It is submitted that the witness schedule as also a petition to re-open the case for evidence has been filed after the dismissal of I.A.No.2005/06 by the court below. In the circumstances, I direct the court below to afford an opportunity to the petitioner to adduce evidence by examining the witness to the disputed agreement, re-opening the evidence in the case, provided an amount of Rupees one thousand is deposited as costs to the respondent. The cost shall be deposited in the court below positively within two weeks from today for payment to the respondent. In case of failure, the petitioner/plaintiff shall not get an opportunity as stated above. The impugned order

shall stand set aside on cost being deposited as ordered above.

This writ petition is disposed of with the above directions.

6th March, 2007

(K.P.Balachandran, Judge)

tkv